

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL KEECH

Plaintiff

vs.

COMPLAINT

-CV-

UNITED STATES OF AMERICA

Defendant

Plaintiff, by his attorneys, Law Offices of Eugene C. Tenney, PLLC, as and for his Complaint against Defendant herein, alleges as follows, upon information and belief:

1. Plaintiff was and is a citizen of the United States of America and a resident of the State of New York, County of Genesee, residing at 119 N. Main Street, Oakfield, New York.

2. The Court has jurisdiction by reason of §1346 of Title 28 of the United States Code, and Chapter 171 of Title 28 of the United States Code known as the Federal Tort Claim Act.

3. This Court is the appropriate venue for this action as, pursuant to 28 U.S.C. §1402(b) given that this is the district in which the Plaintiff resides.

4. Defendant is a sovereign entity that, through its agents, servants and employees and through the Department of Veterans Affairs, a federal agency, at all times hereinafter mentioned, did and does operate a hospital, commonly known as the VA Loma Linda Healthcare System located at 11201 Benton Street, Loma Linda, California.

5. Pursuant to and in compliance with the statutes and regulations made and provided, including 28 U.S.C. §2675(a) and 28 U.S.C. §2401(b), Plaintiff filed administrative claims for Plaintiff's conscious pain and suffering and economic damage, on or about November 29, 2016 and which were acknowledged received on or about that date with the federal agency out of whose activities the claims arose. A copy of the "Claim for Damage, Injury, or Death" filed on behalf of the Plaintiff, as well as the affidavit confirming service upon the VA Loma Linda Healthcare System are annexed hereto collectively as Exhibit "A."

6. More than six months have elapsed since the Defendant, by and through said federal agency, was placed on notice of the administrative claims, and the Veterans Administration (The VA Loma Linda Healthcare System) has failed to make a final disposition of the claim, and has failed to provide any denial or other written response to the Plaintiff's administrative claim. As a result, the failure to respond within six months is deemed a final denial pursuant to 28 U.S.C. §2675.

7. That the within action is commenced within six (6) months of denial of Plaintiff's administrative claims.

8. Plaintiff has duly complied with all conditions precedent to commencement of this action.

9. That Plaintiff, MICHAEL KEECH, was under the continuous care and treatment at the aforementioned VA Loma Linda Healthcare System for his general medical care as well as care attendant to diagnosis, care and treatment for damage and injuries to his right hip, as well as for the coordination of care and treatment for same with other health care professionals and entities, and on or about June 8, 2015 the

Defendant, its agents, servants or employees performed surgery on the Plaintiff's right hip.

10. That Defendant by and through its agents, servants and employees at the VA Loma Linda Healthcare System was negligent, careless and reckless, and deviated from accepted standards of medical and hospital care in, among other things, failing to take a full and complete histories in connection with Plaintiff's care and treatment; failing to obtain appropriate attendant information regarding Plaintiff's prior medical conditions; negligently performing surgery upon the Plaintiff's right hip; negligently damaging cartilage and other articular surfaces during the said surgery; negligently causing or failing to properly treat capsular contracture with adhesions; negligently suturing structures in the hip during the surgery and failing to remove said suture material; negligently allowing or causing the ilio-femoral ligament to become imbricated or medialized to the wall of the acetabulum, causing delamination of the articular cartilage and surfaces; negligently failing to remove intra articular loose bodies within the knee; failing to appropriately coordinate Plaintiff's care and treatment with other health care professionals and entities participating in Plaintiff's care and in being otherwise negligent.

11. That as a result of the foregoing and the negligence, carelessness, recklessness and departure from accepted standards of medical and hospital care in the community of Defendant, Plaintiff, MICHAEL KEECH, suffered severe and permanent injuries, pain and suffering and mental and emotional distress, economic losses, all to his damage in the amount of Five Million Dollars (\$5,000,000.00).

WHEREFORE, Plaintiff respectfully demands judgment against the Defendant on

the first cause of action in the amount of Five Million Dollars (\$5,000,000.00) and requests such other and further relief as to this Court may seem just and proper, including the costs and disbursements of this action.

DATED: Buffalo, New York
May 31, 2017

LAW OFFICES OF EUGENE C. TENNEY, PLLC

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